

REMARKS/ARGUMENT

Claims 1, 2, 15 and 16 are pending. Claims 3-14 and 17-28, which were withdrawn from consideration as being directed to non-elected inventions, have been cancelled without prejudice or disclaimer of subject matter. In particular, these claims may be presented for consideration in one or more divisional applications. The specification has been amended as to matters of form. Claims 1 and 15 are independent.

Initially, the Office Action Summary sheet incompletely acknowledged receipt of the priority document for this case. Although the acknowledgment box (item 3) was checked, and the box indicating "all" (item 3(a)) also was checked, the third box, (item 3(a)(1)) used for indicating that what was received was the "Certified copies of the priority documents. . ." was not checked. Applicant presumes this was an oversight and requests that all three boxes be checked in the next Office Action to properly acknowledge receipt of the priority document. } ①

The Examiner did not initial certain citations on the PTO-1449 forms that were returned with the Office Action. On the PTO-1449 filed as paper No. 2, the Examiner indicated on that form PTO-1449 that no translation or pertinence of the references were provided in English. However, the three Japanese Laid-open applications that are cited in that paper are the ones the pertinence of each of which were discussed in the Background of the Invention section of the present specification. Accordingly, it is requested that they be considered and an initialed PTO-1449 be returned with the next Office Action. } ②

Claims 1, 2, 15 and 16 were rejected under 35 U.S.C. § 103 as obvious from U.S. Patent 6,256,326 (Kudo) in view of U.S. Patent 6,256,292 (Ellis et al.). Applicant traverses and submits that independent claims 1 and 15 are patentable for at least the following reasons.

Claim 1 is directed to a node comprising first, second, and third layers, in which a packet is mapped in the first layer, the first layer judges whether the packet is to be dropped at

the node or to be hopped to a next node. The first layer transmits the packet to the third layer through the second layer when the first layer judges that the packet is to be dropped at the node. As a result of the recited structure, packets can be directed in a network without having to be processed by the third layer, for example the layer with the router.

At page 2, lines 1-3 of the Office Action, the position was taken that Kudo teaches the recited first, second and third layers. Specifically, the recited first layer is said to correspond to PPI (terminal interfaces 40, 60 (and presumably their equivalent 45)), as mentioned at col. 7, lines 33-36, the recited second layer is said to correspond to element 44 (cross-connect) shown in Figure 11 (and presumably its equivalents 41 and 61), and the recited third layer is said to correspond to RST (optical interface 42 (and presumably its exact counterpart 62, and their counterparts 43 and 46)), as mentioned at col. 7, lines 42-45. To summarize, according to the referenced portion of the Office Action, the terminal interfaces correspond to the first layer, the cross-connects correspond to the second layer, and the optical interfaces correspond to the third layer.

In applying these identified structures to the recited elements of claim 1, the Office Action took the position that col. 6, lines 39-45 shows the first layer determining where the data packet is destined, and extracting the path information and providing a path identifier to the second layer, as is recited in claim 1. However, the identified portion of Kudo teaches that it is the *optical interface 62*, part of the *third layer* as defined in the Office Action (being identical to optical interface 42), that performs these functions, *not* the terminal interface 60, which was identified in the Office Action as corresponding to the recited first layer. In view of this inconsistency, the Examiner has identified no teaching in Kudo that corresponds to the recited element under discussion. For at least this reason, the Office Action fails to set forth a prima facie case of obviousness as against claim 1.

The Office Action is similarly inconsistent in matching structure in Kudo with the recited layers in its discussion of the feature of claim 1 by which the first layer transmits the

packet to the third layer through the second layer when the first layer judges that the packet is to be dropped at the node. In particular, at page 2, lines 14-15 of the Office Action, in attempting to match structure in Kudo with the structure of this feature, the Examiner identifies reference numeral 45 (a terminal interface, and thus presumably part of the first layer) in Kudo as corresponding to the recited *third* layer. However, as was discussed above, earlier the Office Action the terminal interfaces were deemed to correspond to the recited *first* layer. Thus, the Office Action is once again inconsistent in applying Kudo's structure to the recited structural elements.

At least because the references to Kudo's structure are inconsistently applied, the Examiner has failed to set forth a prima facie case of obviousness. Moreover, because of this inconsistency, no teaching or suggestion has been identified of any of the structural elements of claim 1, since each is recited in terms of the various layers and the interrelationships therebetween.

Ellis fails to remedy the above-mentioned deficiencies of Kudo. Accordingly, claim 1 is believed clearly patentable over those references. Claim 15 is a method claim corresponding to claim 1 and is believed patentable for at least the same reasons as claim 1.

The other claims in this application are each dependent from one or another of the independent claims discussed above and are therefore believed patentable for the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, however, the individual reconsideration of the patentability of each on its own merits is respectfully requested.

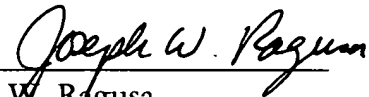
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In view of the foregoing amendments and remarks, Applicant respectfully requests favorable reconsideration and early passage to issue of the present application.

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Respectfully submitted,

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